

FILED

NOVEMBER 7, 2011

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

EFFECTIVE

nunc pro tunc July 13, 2011
NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

In the Matter of:

ANAND N. MUNSIF, M.D.
License No. 25MA05136700

ORDER SUSPENDING
LICENSE

This matter was reopened before the New Jersey State Board of Medical Examiners (the "Board") on June 30, 2011, upon the Attorney General's filing of a Motion to Enforce Litigant's Rights. Specifically, the Attorney General moves for the Board to make a finding that respondent Anand N. Munsif, M.D., has engaged in professional misconduct by failing to have complied with requirements of a prior Board Order entered on November 12, 2010,¹ pursuant to which Dr. Munsif was required to submit to assessments of both his mental status and his skill to presently continue to

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The Board's prior Order, although a public Order, was entered without specific identification of Dr. Munsif (he was instead identified only as "Dr. M" therein), because the Order had been entered at a time when this matter was considered to be "under investigation" and thus not a matter of public record pursuant to N.J.S.A. 45:1-36. As we herein conclude that Dr. Munsif's failure to have complied with our prior Order provides basis for a finding of professional misconduct and cause to support the active suspension of his license, we are presently publicly identifying Dr. Munsif. Respondent has in essence pierced any veil of confidentiality to which he could have otherwise been entitled by his unilateral and contumacious elections not to comply with the terms of our prior Order. The public interest dictates that respondent's identity be revealed, as it would be meaningless to order the suspension of a physician's license without providing notice to the public of that action by identifying the subject of the suspension order.

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practice medicine. The Attorney General additionally seeks the imposition of sanctions against respondent, to include the entry of an Order suspending his license to practice (at least until such time as the previously ordered assessments are secured and reviewed by the Board), based on his non-compliance with the requirements of the Board's prior Order.

The Attorney General's motion was supported by a letter brief dated June 30, 2011 and a simultaneously filed certification of D.A.G. Doreen A. Hafner. A copy of the Board's prior Order, a certification of William V. Roeder, Executive Director of the Board, and copies of numerous letters written to D.A.G. Hafner, the Board office and other addressees by respondent subsequent to the date of the Board's prior hearing, along with two letters from D.A.G. Hafner to respondent, were appended to D.A.G. Hafner's certification. Respondent filed a reply letter brief, dated July 10, 2011.²

Both parties appeared before the Board for oral arguments on the motion on July 13, 2011. Deputy Attorney General Doreen A. Hafner appeared for complainant Attorney General Paula Dow, and respondent appeared *pro se*. Respondent acknowledged, on the record, that he understood that he could be represented by an

By way of written request dated July 6, 2011, respondent sought additional time to file a written reply to the Attorney General's motion and sought an adjournment of this proceeding. That request was denied in writing on July 8, 2011.

attorney in these proceedings. We thereafter entertained oral argument, and received documents in evidence, from both parties.³

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The Attorney General's case was supported by the documents which had been appended to D.A.G. Hafner's certification, which documents were formally moved into evidence as follows:

- P-1 Copy of Order filed on November 12, 2010, In the Matter of M., M.D., "Compelling Submission to Assessment of Skills and Psychological Examination as a Condition of Continued Licensure.
- P-2 Certification of William V. Roeder, dated June 29, 2011.
- P-3 Packet of Letters written by Dr. Anand Munsif, to Doreen A. Hafner, D.A.G., New Jersey State Board of Medical Examiners, Deputy Director of Division of Consumer Affairs, and Paula T. Dow, Attorney General, including letters dated June 22, 2011, April 15, 2011, March 30, 2011, March 24, 2011, March 20, 2011, March 19, 2011, January 9, 2010 (sic), January 2, 2010 (sic) January 1, 2010 (sic), December 28, 2010, December 22, 2010, December 7, 2010, November 3, 2010, November 1, 2010, November 1, 2010 ("second letter"), October 14, 2010 and October 13, 2010, and letters from Doreen A. Hafner, D.A.G. to Dr. Munsif dated January 3, 2011 and October 15, 2010.

Respondent offered the following documents in his defense, which documents were accepted into evidence, with the caveat that they would be given appropriate weight upon review by the Board:

- R-1 July 10, 2011 letter, in reply "for each item of certification of DAG Doreen A. Hafner dated June 30, 2011."
- R-1a Article reprinted from New England Journal of Medicine dated June 6, 1991, "Catheter Ablation of Accessory Atrioventricular Pathways (Wolff-Parkinson-White Syndrome) by Radiofrequency Current."
- R-1b Article reprinted from New England Journal of Medicine dated July 30, 1992, "Treatment of Supraventricular Tachycardia Due to Atrioventricular Nodal Reentry by Radiofrequency Catheter Ablation of Slow-Pathway Conduction."

Upon review of the documents in evidence, briefs and oral arguments of the parties, we unanimously conclude that cause exists to presently find that respondent has engaged in professional misconduct by failing to have complied with the requirements of our prior Order. Additionally, we unanimously conclude that cause exists to presently enter a public Order suspending respondent's license to practice medicine and surgery in the State of New Jersey, pending his compliance with the previously imposed requirements. Simply put, respondent has failed to secure assessments which he was to have submitted to on or before February 10, 2011. Those assessments were deemed critical and necessary to provide the Board with sufficient information to determine whether

R-2 Documents including Questions required to be answered for Online License Renewal by the Oklahoma State Board, charts prepared by Dr. Munsif including a "Supraventricular Tachcardia Survey" (identifying certain physicians and hospitals), a chart comparing crime statistics in Elizabeth, NJ, Livingston, NJ, New Jersey State and National; a chart comparing St. Barnabas Hospital to St. Elizabeth Hospital, and a document entitled "Additional Negative Comments about ... Ricardo J. Fernandez, M.D."

R-3 Copy of Article from Star Ledger, November 14, 2006, "UMDNJ Bribe Charges Face U.S. Scrutiny."

We point out herein that although we allowed respondent to move the documents he sought into evidence, having now reviewed the documents we find the vast majority of those documents, to include the articles from the New England Journal of Medicine and from the "Star Ledger," the Oklahoma Medical Board's licensing questionnaire, and respondent's self-generated lists and charts to be wholly unrelated and irrelevant to the issue before us - that is, whether respondent has or has not complied with the requirements of our Order that he secure an assessment of his practice skills and of his mental acuity.

respondent, a physician who presently holds an unrestricted plenary license that allows him to practice medicine in New Jersey, could or could not continue to safely engage in any such practice. As respondent has shown no good cause why he has failed to submit to the requested assessments, we conclude that the Board's paramount interest in, and obligation to protect the public health, safety and welfare dictates that we presently suspend respondent's license, and order that any suspension be continued indefinitely until such time as respondent secures the previously ordered assessments and those assessments are provided to the Board for review.

Findings of Fact

Extensive findings of fact regarding events that occurred prior to October 13, 2010 are set forth at length within our sixteen page Order "Compelling Submission to Assessment of Skills and Psychological Examination as a Condition of Continued Licensure" (P-1 in evidence), which Order is appended hereto and incorporated in its totality herein by reference. To briefly summarize the procedural and factual history set forth within the prior Order, an investigation of respondent's ability to practice medicine and surgery was commenced by this Board following the Board's receipt of documents forwarded by the American Board of Internal Medicine, which documents raised concerns regarding respondent's mental status. Respondent appeared before a

Preliminary Evaluation Committee of the Board on November 5, 2008 represented by counsel. Thereafter, the Board requested that respondent undergo a skills assessment, but respondent did not schedule any such assessment.

On September 22, 2010, the Attorney General filed a motion seeking to require Dr. Munsif to submit to a psychological evaluation and an assessment of skills. That motion was supported, in part, by an expert report submitted by Ricardo J. Fernandez, M.D., which cited "irrational," "illogical" and "paranoid" thinking on Dr. Munsif's part. Oral argument on the motion was held before the Board, in executive session, on October 13, 2010.

Following that proceeding, we ordered that respondent submit, within ninety days, to a psychological evaluation to evaluate whether his continued practice of medicine may jeopardize the safety and welfare of the public, and to an assessment of skills in Internal Medicine and Clinical Cardiac Electrophysiology to determine whether he could continue to practice with reasonable skill and safety. Both evaluations were expressly ordered as conditions for continued licensure, and we specifically reserved the right, in the event that respondent failed to satisfy the conditions of the Order, to initiate further proceedings deemed necessary to protect the public.

The Board's November 12, 2010 Order was served upon respondent by certified mail on November 16, 2010 (Roeder

Certification, ¶4, P-2 in evidence), and respondent acknowledged receipt by signing the return receipt requested card (Roeder Certification, ¶5). Respondent has failed, since November 12, 2010, to submit to either required evaluation. (Roeder Certification, ¶6-7). Indeed, respondent conceded when appearing before the Board on July 13, 2011 that he had not submitted to either evaluation.⁴

Analysis

The reasons underpinning our prior conclusion that need existed to require respondent to undergo both a psychological evaluation and a skills assessment are set forth at length within the text of our fully adopted prior Order. Those concerns remain unabated since the entry of that Order. Moreover, concerns

⁴ Respondent was placed under oath when appearing before the Board on July 13, 2011. After being afforded latitude to make a series of arguments which we found to have no apparent relation to the issues before the Board, respondent was asked directly by Board President Jordan whether he had or had not complied with the Board Order (Transcript of July 13, 2011 hearing, p. 21, 5-9). The transcript memorializes that respondent then stated:

DR. MUNSIF: Okay. The reason why I have not complied because it is not to the best of my facilitation. That is all.

CHAIRPERSON JORDAN: So, the answer is you have not complied with the Board's Order?

DR. MUNSIF: Right. I don't think that the Board should have ordered it, because the Attorney General's policies and procedures are bad in concept, because I would have gone for these things in 2008, but they prevented me from going.

Transcript, p. 21, 10-20.

regarding respondent's mental acuity continue to be manifest in both respondent's written submissions and oral statements. (See letters written by Dr. Munsif in evidence at P-3, respondent's July 10, 2011 letter submitted in opposition to this motion, R-1 in evidence, and the hearing transcript of July 13, 2011).

As noted above, respondent expressly concedes that he has not submitted to the ordered assessments, but continues to make a stream of disassociated and irrational arguments to explain why he has not done so, most of which in no way address the issues that are presently before the Board. It is impossible herein to seek to summarize, or address, the bulk of respondent's arguments, as to do so would require us to attempt to infuse logic into what we find to be wholly illogical.

If we attempt to distill respondent's arguments to those that are in some manner related to the question why he has failed to secure required assessments, respondent appears to be arguing that Board action is unnecessary. He repeatedly asserts that he cannot or will not submit to any practice assessment because the Board and/or the Attorney General are obstructing him from doing so and/or seeking to require him to be evaluated at or practice at "second rate" institutions that provide "distinctly inferior patient care." (Transcript, p. 23, l. 15-23, passim references throughout). Respondent likewise continues to summarily dismiss and belittle observations that were previously made by Dr. Ricardo

Fernandez, claiming that Dr. Fernandez' report is "laughable" and has "no relation to reality." (See R-1 in evidence).

We unanimously reject Dr. Munsif's "explanations" as to why he has failed to submit to the Board required assessments. Dr. Munsif has failed to explain, other than in a completely illogical and irrational manner, the basis for his refusal to submit to the evaluations. Respondent clearly fails to understand, or address, the fact that he is free to choose the entity at which his skills assessment will be conducted, and the fact that he is likewise free to select the individual to conduct the psychological examination, subject only to Board approval of any entity or individual that he may nominate. Notwithstanding respondent's perseveration on concerns regarding the supposed inferiority of institutions that may have previously been proposed, it is absolutely the case that the evaluations we have required can be done by other individuals or entities. The record clearly demonstrates that respondent has failed to so much as identify or propose any entity or individual to conduct any evaluation.⁵

We set forth at length, within our prior Order, the basis for our findings that Dr. Munsif had evinced illogical and irrational thought processes. The record before us today only buttresses those findings, as all of Dr. Munsif's letters to the

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Respondent has previously been advised that any required evaluations would be paid for by the Board (Hafner Certification, ¶3).

Board, and his oral argument before the Board, continue to richly illustrate the very same concerns which undergird our initial determination that need existed to secure evaluations. Indeed, Dr. Munsif's arguments evince a fundamental inability to understand what is being required of him by the Board, let alone any understanding why such requirements are being imposed. That absence of understanding, in turn, convincingly demonstrates why we find it necessary, in order to perform our paramount obligation to protect public health, safety and welfare, to order the suspension of Dr. Munsif's license.

Conclusion and Order

Upon consideration of the arguments of the parties, we unanimously conclude that the Attorney General has demonstrated that respondent has failed to comply with the conditions of the Board's November 12, 2011 Order. Given that failure, we conclude that respondent has engaged in professional misconduct, see N.J.S.A. 45:1-21(e). We additionally conclude that good cause presently exists to explicitly suspend respondent's license to practice medicine and surgery in the State of New Jersey until such time as he fully complies with the conditions imposed in the prior Order.⁶

WHEREFORE it is on this 7TH day of November, 2011

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As this Order was fully announced on the record on July 13, 2011 and effective at that time, this Order is being entered *nunc pro tunc* July 13, 2011.

ORDERED nunc pro tunc July 13, 2011:

1. The license of Anand N. Munsif, M.D., to practice medicine and surgery in the State of New Jersey is hereby suspended. During the period of license suspension, respondent is hereby ordered to:

a) submit to a psychological evaluation by a psychologist or psychiatrist, pre-approved by the Board, which evaluation shall be conducted for the purpose of seeking to determine whether Dr. Munsif's continued practice of medicine would jeopardize the safety and welfare of the public; and

b) submit to an assessment of skills in Internal Medicine and Clinical Cardiac Electrophysiology, to be conducted by a post-licensure assessment entity pre-approved by the Board, for the purpose of seeking to determine whether Dr. Munsif possesses skills sufficient to allow him to resume the practice of medicine and surgery with reasonable skills and safety; and

c) cause the evaluators to forward the resulting evaluative reports to the attention of William V. Roeder, Executive Director, Board of Medical Examiners, P.O. Box 183, Trenton, New Jersey 08625-0183.

2. This Order shall remain in full force and effect until further Order of this Board, which further Order shall be entered only at such time as the Board obtains, and has opportunity to review, all findings and recommendations that may be made within

the two assessments ordered herein.

3. The Board herein expressly reserves the right to continue the suspension of respondent's license, and/or to place conditions upon any resumption of practice of medicine by respondent, following review of the assessments ordered herein.

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

By:

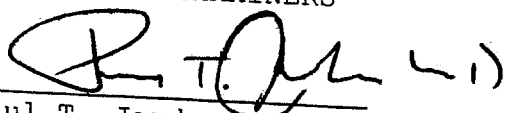

Paul T. Jordan, M.D.
Board President

EXHIBIT A

FILED

November 12, 2010

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF

■ M., M.D.¹

LICENSE NO. 25MA * * * * *

TO PRACTICE MEDICINE AND SURGERY
IN THE STATE OF NEW JERSEY

: Administrative Action
:
: ORDER COMPELLING SUBMISSION
: TO ASSESSMENT OF SKILLS AND
: PSYCHOLOGICAL EXAMINATION
: AS A CONDITION OF CONTINUED
: LICENSURE
:

This matter was opened to the New Jersey State Board of Medical Examiners ("the Board") upon the filing on September 22, 2010 of a Notice of Motion by Attorney General Paula T. Dow, Deputy Attorney General Doreen A. Hafner appearing, seeking to require respondent Dr. ■ M., a physician licensed by the Board and appearing pro se,² to submit to a psychological evaluation and an assessment of skills.

¹ N.J.S.A. 45:1-36 provides that any information concerning the conduct of a physician or surgeon provided to the Board remains confidential pending final disposition of the inquiry or investigation by that Board. Therefore, the Board granted the State's motion that the record in this matter be sealed, that only respondent's initials are to be used and that all identifying information, including the full license number, is to be omitted so that respondent's confidentiality is preserved during the pendency of this investigative matter.

² Dr. M. had been represented by counsel in this matter until June of 2010.

An expert report by Ricardo J. Fernandez, M.D., was submitted citing "irrational," "illogical" and "paranoid" thinking on the part of respondent, and finding good cause to request that Dr. M. submit to examination by a Board-designated psychiatrist to evaluate respondent's psychiatric/psychological status and safety to practice. (Pa, Exhibit B)³ The Attorney General further alleged that, although Respondent currently holds a valid, active license, and has satisfied continuing education requirements, respondent has not practiced medicine since 1997. Considering respondent's time out of practice in conjunction with the clear need for a psychological evaluation, D.A.G. Hafner urged the Board, under authority of N.J.S.A. 45:1-22(f), (g) and (h) to require a skills assessment as well as ordering Respondent to undergo psychological evaluation.

Written submissions were filed by the Attorney General and by Dr. M., and oral argument was held before the Board in executive session on October 13, 2010, pursuant to the investigative exception to the Open Public Meetings Act set forth in N.J.S.A. 10:4-12(b)(6).

The Board has determined that in the interest of the public health, safety and welfare, and pursuant to N.J.S.A. 45:1-22(f), (g) and (h), respondent shall be required to submit to a psychological evaluation and a skills assessment as a condition of

³ Pa. = Petitioner's appendix.

continued licensure. The Board's rationale for this decision is explained below.

Dr. M. came to the Board's attention when the American Board of Internal Medicine (ABIM) alerted the Board to certain correspondence submitted by respondent to ABIM, and to a law suit filed by respondent in [REDACTED] in Federal Court in the [REDACTED] of [REDACTED]. The documents submitted contained incoherent and/or irrational statements, to the effect that ABIM -- an independent organization nationally responsible for evaluating physicians for Board specialties -- was acting with deliberate animus against him. This included the assertion that ABIM falsified the results of an examination he took prior to 1996, causing him to fail. (Pa, Exhibit C, Part 2,0105) These statements raised serious concerns about respondent's mental state. On November 5, 2008, respondent appeared before a Preliminary Evaluation Committee of the Board ("Committee") with counsel and testified under oath in response to questions posed by Committee members. Although the transcripts of this appearance are not available,⁴ the Attorney General has submitted a certification indicating that Dr. M. testified that he ceased practicing as a physician in 1997, and has not practiced medicine since that date. In addition, his testimony revealed that he maintains a DEA permit and a New Jersey CDS

⁴ According to D.A.G. Hafner's uncontested certification, the transcripts were lost when the court reporter's basement was flooded, causing the loss of her notes and a disk recording.

number. He also expressed reluctance to obtain additional education prior to resumption of the practice of medicine, claiming without any documentation that it was not necessary because he had been "far ahead" of other practitioners in 1997. (Hafner cert., ¶5) With respect to his dispute with ABIM, respondent expressed his unsupported belief that in 1994, the entity conspired to falsely report that he failed the certification examination, and made the incredible claim that several of his colleagues were able to describe his examination answers, and told him he had actually passed the examination. This extraordinary assertion increases initial unease about Dr. M.'s mental condition, and Dr. M.'s lengthy time out of practice serves to exacerbate concern about his clinical competency to practice. These concerns are heightened as respondent plainly has no awareness of his own limitations. According to the Attorney General, this was the basis for the filing of this motion.

Deputy Attorney General Hafner's certification sets forth the facts relating to Dr. M.'s medical career, which were not disputed: in 1994 he completed a fellowship in Clinical Cardiac Electrophysiology, a highly technical, rapidly evolving field. He then began the private practice of medicine. In 1996, he became initially Board certified by ABIM in Internal Medicine. His certification lapsed in 2006, and in 2007, he failed the recertification examination. According to D.A.G. Hafner, and as

previously confirmed by Dr. M., he ceased practicing medicine in 1997, a year in which he allegedly began experiencing serious health problems. (Hafner cert., ¶5)

In the brief accompanying her Notice of Motion, the Attorney General indicated that respondent has been unwilling to undergo a skills assessment at Albany Medical College, based upon what he asserted was its low success rate in the area of catheter ablation procedures (Pa, Exhibit C, Part 2, 0004).⁵ Respondent firmly maintains that Albany Medical College cannot appropriately assess his skills because the success rates of facilities where he once was employed are allegedly superior to that of the Albany facility. Although respondent at one time appeared to be contemplating, by his own choice and as a concession to the Board, undergoing a skills assessment at Cooper University Hospital, no assessment was ultimately scheduled by him. (Pb6)⁶

Dr. M. submitted two disjointed written responses to the Notice of Motion, dated October 2, 2010 and October 4, 2010, respectively.⁷ In the earlier submission, respondent sharply criticized Dr. Fernandez for using the federal court papers in the

⁵ Pa = Petitioner's appendix.

⁶ Pb = Petitioner's brief

⁷ A third faxed submission dated October 5, 2010, notifies the Board that the October 4, 2010 submission was sent, and comments about the success rates of hospitals in connection with certain procedures.

ABIM suit in his analysis without reading the decision by the Third Circuit, and without considering certain "sworn testimony" by ABIM's counsel indicating that he, Dr. M., would be able to retake the examination for certification "at any time."⁸ (The [REDACTED] Circuit opinion affirmed the District Court's dismissal of Dr. M.'s suit.) This submission also cites his belief that the Board has adopted in his regard a "new policy" by ordering skills assessments for physicians long out-of-practice.⁹ The inadvisability or unfairness of applying this "new policy" in his case, and his professed reluctance to undergo a skills assessment at Albany Medical College without the Board ascertaining the institution's procedural success rate, are the primary arguments he sets forth on the skills assessment issue.

The October 4 submission reiterates and expands on these factually-unsupported arguments, referencing a claimed "precedent" relating to a physician from Edison, New Jersey, unrelated to any Board action.¹⁰ This submission also alleged as evidence of a State-

⁸ The relevance of this argument is not entirely clear. Presumably the fact that Dr. M. is entitled to retake the examination (as are other licensees) is intended to show his competence in some manner.

⁹ Respondent does not clearly define what he believes the "new" policy is as compared to any prior policy; however one can deduce from his submissions that he believes ordering a skills assessment following time out-of-practice is a new policy.

¹⁰ Again, the relevance of this argument is not clear, nor are the facts known to the Board.

based conspiracy, that Dr. M. had sought verification of postgraduate training from the University of Medicine and Dentistry (UMDNJ), and received no response for 45 days. Dr. M. referred to this incident in oral argument as well, as indicative of how the "State" (the University and the Board) deals with him unfairly, and is to blame for his inability to find employment, contributing to his lengthy time out of practice.

At oral argument of the motion before the Board on October 13, 2010, Deputy Attorney General Hafner cited Dr. Fernandez's report in support of the contention that a psychological evaluation should be required to ascertain whether continued practice by respondent would jeopardize the public safety and welfare. D.A.G. Hafner further maintained that Dr. M. had not practiced medicine for 13 years, and that given the advances and changes in the practice of medicine in the course of that time, a skills assessment was warranted.

Dr. M. responded by arguing that much of his time out of practice should be disregarded, because it was caused by actions of the State, the Board, and UMDNJ, along with certain unspecified New Jersey physicians who declined to hire him. He claimed he was not hired because his professional outcomes were superior to those of the potential employers, and that he constituted an economic threat to them. He further contended that he had not actually ceased the practice of medicine in 1997. According to Dr. M., his ability to

practice was damaged in 1997 when the State allowed the private practice in which he was working to hire clinical fellows to perform the work he had been doing, which provided a cheaper alternative and led to his loss of employment. He claimed (with no evidentiary documentation) that he was subsequently unable to obtain employment because he was coming from a facility with a 94-96% success rate, and seeking work at facilities with only a 75% success rate; the facilities were thus purportedly unwilling to hire him. He stated that he was unable to resume practice until 2004, when the success rate for New Jersey facilities increased.¹¹ However, he provided no explanation as to why he did not actually resume the practice of medicine in 2004.

As to his actual time out of practice, Dr. M. admitted that he had not performed electrophysiology studies since 1997, but he insisted he had not ceased the practice of medicine at that time. He maintained that he continued intermittently in general practice until 1999, though he did not document any specific work experience. After that, he worked on patents, wrote books, and did not engage in patient care on a regular basis. He acknowledged that he has not had malpractice coverage since 1999. When directly asked whether he had practiced recently, respondent maintained that in October of

¹¹ Dr. M. also claimed that bad equipment in facilities limited his ability to practice; and that in 1997-98, UMDNJ declined to grant fellowships in cardiology to him and others because of racial discrimination.

2008 he had practiced medicine when he revived his mother from an unresponsive state after she was discharged from a hospital.¹² Dr. M. thus claimed that this emergency, impromptu, isolated action for a relative constituted his resumption of the practice of medicine. He did acknowledge that he needed some degree of skills update, but maintained that he should be permitted to undertake this only as he deemed appropriate, and with the issue ultimately left to the discretion of a credentials committee of any facility he might be employed at, without the intervention of the State of New Jersey. This, Dr. M. adamantly insisted, was consistent with precedent.

The Board's statutorily-imposed responsibility to ensure that physicians practice with reasonable safety includes ensuring their psychological fitness to practice. N.J.S.A. 45:1-22 authorizes the Board to:

* * *

(f) Order any person, as a condition for continued licensure, to submit to any medical or diagnostic testing and monitoring or psychological evaluation which may be required to evaluate whether continued practice may jeopardize the safety and welfare of the public;

* * *

The Board's statutory mandate to protect the public also includes ensuring that its licensees possess clinical competency and

¹² See also Pa, Exhibit C, Part I, 0007A, Response to Question 1.

are able to practice medicine with reasonable skill and safety using up-to-date techniques and equipment. In furtherance of this mandate, N.J.S.A. 45:1-22 authorizes the Board to:

* * *

(g) Order any person, as a condition for continued . . . licensure, to submit to an assessment of skills to determine whether the licensee can continue to practice with reasonable skill and safety, and to take and successfully complete educational training determined by the Board to be necessary;

(h) Order any person, as a condition for continued . . . licensure, to submit to an assessment of skills to determine whether the licensee can continue to practice with reasonable skill and safety, and to submit to any supervision, monitoring or limitation on practice determined by the Board to be necessary.

* * *

With respect to ordering a psychological assessment, Dr. Fernandez's letter of August 9, 2010, reflecting his opinion of documents submitted for his review, states:

In his requests and responses to [ABIM and the Board] and his legal filings, Dr. M. shows a repetitive pattern of poor judgment, misperceptions and distortions and a flavor of paranoia about the motivations of others. He is very defensive in his responses and frequently irrational and illogical with many projections of his own paranoid thinking into the intent of others.

Although a full assessment of his mental status is not possible without an interview, there does appear to be significant evidence in the written material to suggest at least a personality disorder. Whether consumer safety is at risk as a result of any psychiatric illness . . . would require a full examination of Dr. M.

Dr. M. has submitted a February 16, 2010 letter from Dr. [REDACTED]

[REDACTED] L [REDACTED] a physician who states that Dr. M. was seen "for neuro-

ophthalmic consultation regarding transient vision loss." Virtually the entire letter, of one and one half pages, addresses Dr. M.'s eye condition. Only one line in the report addresses his mental condition: "He had normal mental status, cranial nerves, strength, coordination and gait." (Pa, Exhibit A)

The Board has considered the record in this matter, and finds Dr. Fernandez's report supportive of the need for Dr. M. to undergo a psychological evaluation in order to ascertain whether he is fit to continue as a licensee. However, the Board does not require an expert to perceive the illogical and frequently irrational features of Dr. M.'s conduct vis-a-vis the Board and ABIM. Some examples of this conduct are:

a) In a faxed communication to ABIM sent on December 15, 2001, Dr. M. wrote:

I have been told repeatedly that I had passed the Board exam in 1994, and that the Board was dishonest. Until recently, I refused to believe this. Now I do. So, unless you restore all professional, personal, business, etc. opportunities open to me in 1991, I do not think it is a good idea to have anything to do with you. Also, I was forced to work with many shady characters in California and New Jersey.

b) In a letter dated February 2, 2003 to ABIM, Dr. M. wrote:

The rumor that I have heard is that I had passed the certifying examination in internal medicine on one or more occasions prior to 1996, but was deliberately declared unsuccessful (failed). Then, as a restitution [sic], I was declared a diplomate of the Board in Internal Medicine in 1996 - it did not matter whether I had passed the actual examination or not. The same may have happened at [a] subsequent examination in cardiovascular disease.

c) In 2007, Dr. M. filed suit against physicians from ABIM following his failure to pass a recertification examination in internal medicine. As set forth in the [REDACTED] Circuit opinion included with Dr. M.'s October 4, 2010 submission, Dr. M. attempted to register for the May, 2007 examination, but his registration was cancelled due to late receipt of payment. Dr. M. contended that he had continually telephoned to ABIM to inquire as to whether it had received payment, but had been given misleading responses by ABIM personnel. He claimed he was allowed to register for the June examination, but when he arrived at the examination, he found his registration had been cancelled. Although ultimately he was permitted to take the June 1 examination, he failed. Dr. M. faulted ABIM, blaming the distractions prior to examination, and inadequacies of the examination facility¹³ for his failure of the examination. The federal Complaint in his suit against ABIM physicians, filed and drafted by Dr. M., alleges:

[T]he defendants were aware of the level of performance of the plaintiff because the defendants had access to the approximately 300 questions and answers furnished by the plaintiff as part of pre examination evaluation. . . the defendants, who are in the certification business, were then in a position to judge how much effort it would take to distract the plaintiff to result in a failing grade[.]

(Pa, Exhibit C, Part 2, 0086)

¹³ He claimed that the facility at Lancaster, Pennsylvania lacked cafeteria or snack facilities, and it was necessary to walk in 85 degree weather uphill about three blocks for tea or coffee. (Pa, Exhibit C, Part 2, 0087)

ABIM, recognized by the Board as a well-respected and indeed pre-eminent entity overseeing the certification of physician specialists in the United States, is a not-for-profit organization established in 1933. It is not a subdivision or affiliate of any governmental entity. Respondent's unsupported allegation that ABIM would go to such lengths, i.e., to review and analyze a candidate's prior responses to calculate the precise level of distraction so as to deliberately cause a failing grade, indicates an alarming lack of logic.

d) Dr. M.'s letter of July 26, 2010, following discussion of a planned law suit against the Board, even including a request that the Board specify which federal court outside New Jersey it prefers to litigate in. Respondent then asks the Board to prevail upon Blue Cross to pay his bills for cancer care, and advises the Board that once he files court papers revealing the standard of elder care in New Jersey (with a particular emphasis on care received by his mother), he doubts he will be able to be employed in New Jersey in any capacity as a physician.

Dr. M.'s oral argument before the Board included allegations of poor equipment, facilities with low success rates, decisions not to grant fellowships purportedly for racial reasons, and his inability to find employment. These were all depicted as the responsibility of the State and the Board, and cited to justify that he not be required to undergo a skills assessment after more than

a decade out of practice in a highly technological, rapidly evolving field.

The Board finds that considering Dr. Fernandez's opinion, and the Board's own review of the record including the above examples of Dr. M.'s unstable or illogical thought processes, and in light of its own expertise, requiring respondent to submit to a psychological evaluation pursuant to N.J.S.A. 45:1-22(f) is appropriate and necessary to ascertain whether Dr. M.'s continued practice of medicine is consonant with public health and safety.

With respect to the need for an assessment of skills, although it is difficult to establish with specificity when respondent last practiced medicine, the Board finds that respondent more likely than not ceased the practice of medicine in 1997 or at the latest, 1999. The fact that respondent's malpractice insurance expired in 1999 and has not been renewed since, along with respondent's admissions in the course of oral argument, lead inescapably to that conclusion. Additionally, the Board is convinced that respondent does not have a realistic, accurate perception of his own clinical competency. We reach this conclusion in part based upon his repeated, irrational assertions that his skill level is superior to the proposed evaluators, and an economic threat to the physicians licensed in New Jersey, and in part based upon his perception that such an extended time out of practice should not be addressed by the Board. The Board, utilizing its own expertise, is aware that the practice of

medicine in respondent's chosen field has changed radically over the time period during which respondent has not practiced. Although he has maintained his license to practice medicine, the length of time he has been out of practice, his own acknowledgment of the need for updating his knowledge (in an unstructured fashion), the Board's recognition of the realities of the practice of medicine and its rapid evolution, and respondent's clear inability to recognize his own deficiencies support the granting of the Attorney General's motion with respect to ordering an assessment of skills. The Board also predicates the need for a skills assessment on Respondent's demonstrated poor judgment and the distorted thought processes he has manifested.

Accordingly,

IT IS, ON THIS 12th DAY OF November , 2010,

HEREBY ORDERED:

1. Respondent is ordered pursuant to N.J.S.A. 45:1-22(f), as a condition for continued licensure, to submit within ninety (90) days to a psychological evaluation by a psychiatrist, pre-approved by the Board, in order for the Board to evaluate whether his continued practice of medicine may jeopardize the safety and welfare of the public.

2. Respondent is further ordered pursuant to N.J.S.A. 45:1-21(g) and (h), as a condition for continued licensure, to submit within 90 days to an assessment of skills in

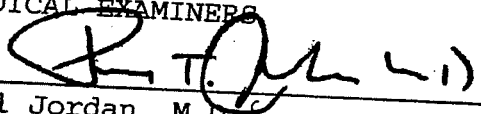
Internal Medicine and Clinical Cardiac Electrophysiology by an entity pre-approved by the Board to determine whether he can continue to practice with reasonable skill and safety. Respondent shall take and successfully complete any additional educational training determined by the Board to be necessary.

3. Respondent shall cause the evaluators to forward the resulting evaluative reports to the attention of William V. Roeder, Executive Director, Board of Medical Examiners, P.O. Box 183, Trenton, NJ 08625-0183.

4. Upon receipt and review of the reports of the evaluations, or if respondent fails to satisfy the conditions of this Order within the specified time frame, the Board reserves the right to initiate proceedings it deems necessary to protect the public.

NEW JERSEY STATE BOARD OF
MEDICAL EXAMINERS

By: _____


Paul Jordan, M.D.
Board President

**DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE
HAS BEEN ACCEPTED**

APPROVED BY THE BOARD ON MAY 10, 2000

All licensees who are the subject of a disciplinary order of the Board are required to provide the information required on the addendum to these directives. The information provided will be maintained separately and will not be part of the public document filed with the Board. Failure to provide the information required may result in further disciplinary action for failing to cooperate with the Board, as required by N.J.A.C. 13:45C-1 et seq. Paragraphs 1 through 4 below shall apply when a license is suspended or revoked or permanently surrendered, with or without prejudice. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains a probation or monitoring requirement.

1. Document Return and Agency Notification

The licensee shall promptly forward to the Board office at Post Office Box 183, 140 East Front Street, 2nd floor, Trenton, New Jersey 08625-0183, the original license, current biennial registration and, if applicable, the original CDS registration. In addition, if the licensee holds a Drug Enforcement Agency (DEA) registration, he or she shall promptly advise the DEA of the licensure action. (With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board. In addition, at the conclusion of the term, the licensee should contact the DEA to advise of the resumption of practice and to ascertain the impact of that change upon his/her DEA registration.)

2. Practice Cessation

The licensee shall cease and desist from engaging in the practice of medicine in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by any health care practice or any other licensee or health care provider. (In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.)

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a group practice title, it shall be deleted. Prescription pads bearing the licensee's name shall be destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee is providing services at the location, all medications must be removed and returned to the manufacturer, if possible, destroyed or safeguarded. (In situations where a license has been suspended for less than one year, prescription pads and medications need not be destroyed but must be secured in a locked place for safekeeping.)

3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall divest him/herself of all financial interest. Such divestiture shall occur within 90 days following the the entry of the Order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

4. Medical Records

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of

general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to medical records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her medical record or asks that record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

5. Probation/Monitoring Conditions

With respect to any licensee who is the subject of any Order imposing a probation or monitoring requirement or a stay of an active suspension, in whole or in part, which is conditioned upon compliance with a probation or monitoring requirement, the licensee shall fully cooperate with the Board and its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a) Monitoring of practice conditions may include, but is not limited to, inspection of the professional premises and equipment, and inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with the Board Order and accepted standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by a rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and providing the designated sample.

**NOTICE OF REPORTING PRACTICES OF BOARD
REGARDING DISCIPLINARY ACTIONS**

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is based on reasons relating to professional competence or professional conduct:

- (1) Which revokes or suspends (or otherwise restricts) a license,
- (2) Which censures, reprimands or places on probation,
- (3) Under which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by such Federal or State agency that is publicly available information.

Pursuant to N.J.S.A. 45:9-19.13, if the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders are provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order will appear on the public agenda for the next monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.